THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.1268 of 2007

Date:01.02.2007

Between:

Shaik Ameer and another.

.. PETITIONERS

AND`

The A.P. State Wakf Board and another.

..RESPONDENTS

ORDER:

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The petitioners are defendants 7 and 9 in O.S.No.136 of 2002 on the file of the A.P. State Wakf Tribunal (for short 'the Tribunal') filed by respondents 1 and 2 herein. They challenge the very maintainability of the suit and seek appropriate writ or direction.

The respondents filed the suit against the petitioners and ten others, for the relief of perpetual injunction. It was pleaded that Acs.11.56 cents of land in Sy.No.126 of Kowlur Village of Panyam Mandal, Kurnool District shown in the suit schedule belongs to a local Mosque and that the petitioners and other defendants in the suit are trying to interfere with the possession of the land. The petitioners contend that Section 83 of the Wakf Act, 1995 (for short 'the Act') provides for filing of suits only by those persons, who are aggrieved by an order passed under the Act or the Rules and viewed in this context, the suit filed by the

respondents is not maintainable.

Sri E.Ayyapu Reddy, the learned senior counsel for the petitioners submits that the Tribunal ought not to have entertained the suit at all, since the respondents do not have the *locus standi* to move it.

The learned standing counsel for the respondents, on the other hand, submits that apart from the persons, who are aggrieved by the orders passed under the Act or the Rules, a Muthawali or an interested person can also institute proceedings in the Tribunal constituted under Sub-section (1) of Section 83 of the Act. He contends that it is to the benefit of the petitioners that the proceedings are instituted in a Tribunal where the parties can lead evidence and the respective contentions can be canvassed.

The petitioners challenge the very maintainability of the suit filed by the respondents in the Tribunal. The Tribunal was constituted under Sub-section (1) of Section 83 of the Act. It is conferred with the power to decide any disputes relating to the Wakfs and their properties. If the petitioners are of the view that the respondents cannot maintain the suit, they can, certainly, raise this ground in their written statement and being a pure question of law, the Tribunal can decide it as a preliminary issue.

Therefore, the writ petition is disposed of, leaving it open to the petitioners to raise the ground of maintainability of the suit as a preliminary issue. If

such a plea is taken and an application is made in this regard, the Tribunal shall decide it as a preliminary issue before it proceeds the suit on merits. There shall be no order as to costs.

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01.02.2007

Note: Issue C.C. in two days.
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